

May 26, 2005

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Gwyn Thorpe  
Date of Filing: January 27, 2005  
Case Number: TFA-0087

On January 27, 2005, Gwyn Thorpe filed an Appeal from a determination issued to her on December 20, 2004 by the Department of Energy's Oak Ridge Operations Office (Oak Ridge). That determination was issued in response to a request for information that Ms. Thorpe submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. Ms. Thorpe asks that Oak Ridge conduct an additional search for documents responsive to her request.

I. Background

Ms. Thorpe filed a request for information in which she sought the medical, personnel, industrial hygiene, radiation exposure, payroll and disability records on Thomas Lee Gaus, her deceased father. *See* December 20, 2004 Determination Letter at 1. On December 20, 2004, Oak Ridge issued a determination which stated it conducted a thorough search for all records responsive to Ms. Thorpe's request and located no responsive records. *Id.* On January 27, 2005, Ms. Thorpe filed the present Appeal with the Office of Hearings and Appeals (OHA). In her Appeal, Ms. Thorpe challenges the adequacy of the search conducted by Oak Ridge. *See* Appeal Letter. She asserts that DOE has been provided with specific details of the employment of Mr. Gaus and "has a duty under FOIA to use reasonable efforts to locate these records." *Id.* She asks that the OHA direct Oak Ridge to conduct a new search for responsive documents.

II. Analysis

The FOIA requires that documents held by federal agencies generally be released to the public upon request. Following an appropriate request, agencies are required to search their records for responsive documents. We have stated on numerous occasions that a FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Todd J. Lemire*, 28 DOE ¶ 80,239 (2002); *Marlene R. Flor*, 23 DOE ¶ 80,130 (1993); *Native Americans for a Clean Environment*, 23 DOE ¶ 80,149 (1993). In cases such as these, "[t]he issue is not whether any further documents might conceivably exist but rather whether the government's search for responsive

documents was inadequate." *Perry v. Block*, 684 F.2d 121, 128 (D.C. Cir. 1982) (emphasis in original).

To determine whether an agency's search was adequate, we must examine its actions under a "standard of reasonableness." *McGehee v. CIA*, 697 F.2d 1095, 1100-01, *modified in part on rehearing*, 711 F.2d 1076 (D.C. Cir. 1983). This standard "does not require absolute exhaustion of the files; instead it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985). Furthermore, the determination of whether a search was reasonable is "dependent upon the circumstances of the case." *Founding Church of Scientology v. National Security Agency*, 610 F.2d 824, 834 (D.C. Cir. 1979).

In reviewing the present Appeal, we contacted officials at Oak Ridge to ascertain the extent of the search that had been performed and to determine whether any other documents responsive to Ms. Thorpe's request might reasonably be located. Upon receiving Ms. Thorpe's request for information, Oak Ridge conducted a search for records in the Mallinckrodt facility files (the facility where Mr. Gaus worked) of the Records Holding Area (RHA) at the Oak Ridge Office. Records in the RHA are retrievable by identifier. Oak Ridge searched using the identifiers provided by the requester for Mr. Gaus, i.e., social security number, name, etc. Oak Ridge stated that it could not locate any responsive documents. Oak Ridge has further indicated that the RHA is the only repository in Oak Ridge which contains any existing personnel, medical or similar records on individuals who worked at Mallinckrodt facilities.

Given the facts presented to us, we find that Oak Ridge conducted an adequate search which was reasonably calculated to discover documents responsive to Ms. Thorpe's request. Accordingly, we will deny this Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed by Gwyn Thorpe, OHA Case No. TFA-0087, on January 27, 2005, is hereby denied.
- (2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: May 26, 2005